IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IDAHO EDUCATION ASSOCIATION; DAVID GRAHAM; KRIS TEENA MARLEY; FREMONT EDUCATION ASSOCIATION; CALDWELL EDUCATION ASSOCIATION; SHOSHONE EDUCATION ASSOCIATION,

Plaintiffs,

vs.

STATE OF IDAHO; C.L. "BUTCH" OTTER, Governor of the State of Idaho, in his official capacity; TOM LUNA, Superintendent of Public Instruction, in his official capacity,

Defendants.

Case No. CVOC 1108212

MEMORANDUM DECISION AND ORDER

PROCEDURAL HISTORY

This is an action challenging the constitutionality of Senate Bill 1108. A Stipulation Concerning Cross-Summary Judgment Proceedings was filed by the parties on July 12, 2011. Plaintiffs' Motion for Summary Judgment was filed on July 15, 2011, along with a Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, the Affidavit of Robin Nettinga in Support of Plaintiffs' Motion for Summary Judgment, and the Affidavit of Beth Cannon in Support of Plaintiffs' Motion for Summary Judgment. Defendants' Motion for Summary Judgment was also filed on July 15, 2011, along with a Memorandum in Support of Defendants' Motion for Summary Judgment and the Affidavit of Clay R. Smith in Support of Defendants' Motion for Summary Judgment.

On July 15, 2011, Plaintiffs filed a Supplement to Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment. On August 8, 2011, Defendants' Memorandum in

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Opposition to Plaintiffs' Motion for Summary Judgment was filed, along with the Second Affidavit of Clay R. Smith in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Motion for Summary Judgment. On the same date, Plaintiffs filed a Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment and the Affidavit of Melyssa Ferro in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment.

Hearing on the parties' motions was held on August 25, 2011, at which time the Court took the matter under advisement.

FACTUAL BACKGROUND

Enacted on March 17, 2011, Senate Bill 1108 (hereinafter SB 1108) amends, revises, and adds certain provisions to the Idaho Education Code. SB 1108 became effective on March 17, 2011, and was amended by House Bill 335 on April 11, 2011, and by House Bill 315 on April 21, 2011. Plaintiff Idaho Education Association (hereinafter IEA) is a labor organization that represents the interests of numerous teachers and other education employees in the state of Idaho. The IEA is also the parent organization of certain local labor organizations that engage in collective bargaining with local school districts throughout the state. Plaintiff David Graham is a teacher in the Moscow School District, and Plaintiff Kris Teena Marley is a teacher in the Pocatello School District. Plaintiffs Fremont Education Association (hereinafter FEA), Caldwell Education Association (hereinafter CEA), and Shoshone Education Association (hereinafter SEA) are labor organizations that represent teachers in the Fremont School District, the Caldwell School District, and the Shoshone School District respectively.

Plaintiffs seek summary judgment on their claims for declaratory relief. Specifically, Plaintiffs assert that SB 1108 is unconstitutional in its entirety because it violates the single subject rule of article III, section 16 of the Idaho Constitution. Plaintiffs also assert that certain provisions of SB 1108 violate article I, section 16 of the Idaho Constitution. Defendants assert that they are entitled to summary judgment as to all of Plaintiffs' claims.

DISCUSSION

Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). The burden of

establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *Van v. Portneuf Medical Ctr.*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009), *citing Finholt v. Cresto*, 143 Idaho 864, 896, 155 P.3d 695, 697 (2007). The Court must "construe the record in favor of the nonmoving party, drawing all reasonable inferences in that party's favor." *Farm Bureau Ins. Co. of Idaho v. Kinsey*, 149 Idaho 415, 418, 234 P.3d 739, 742 (2010), *citing Van*, 147 Idaho at 556, 212 P.3d at 986. When the parties have filed cross-motions for summary judgment, each party's motion must be evaluated on its own merits. *Kinsey*, 149 Idaho at 418, 234 P.3d at 742, *quoting Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001). If the Court finds that "reasonable minds could differ on conclusions drawn from the evidence presented, the motion must be denied." *Kinsey*, 149 Idaho at 418, 234 P.3d at 742, *citing Van*, 147 Idaho at 556, 212 P.3d at 986.

In considering a constitutional challenge to legislation, the Court is guided by the following "fundamental principles" of constitutional law articulated by the Idaho Supreme Court:

> (1) In determining the constitutionality of a legislative enactment, fundamental principles must ever be kept in mind and rigidly observed. Statutes are presumed valid and all reasonable doubts as to constitutionality must be resolved in favor of validity. (2) When a statute is susceptible to two constructions, one of which would render it invalid and the other would render it valid, the construction which sustains the statute must be adopted by the courts. (3) The burden of showing unconstitutionality of a statute is upon the party who asserts it and invalidity must be clearly shown. (4) It is the duty of the courts to uphold the constitutionality of legislative enactments when that can be done by reasonable construction. (5) Unlike the federal constitution, the state constitution is a limitation, not a grant, of power. We look to the state constitution not to determine what the legislature may do, but to determine what it may not do. If an act of the legislature is not forbidden by the state or federal constitutions, it must be held valid.

Leonardson v. Moon, 92 Idaho 796, 806, 451 P.2d 542, 552 (1969) (citations omitted). Further, "[i]t is the duty of the courts to uphold the constitutionality of legislative enactments when that can be done by reasonable construction." *Eberle v. Nielson*, 78 Idaho 572, 578, 306 P.2d 1083, 1085-86 (1957) (citations omitted).

Single subject rule

Article III, section 16 of the Idaho Constitution provides:

> **Unity of subject and title**
> Every act shall embrace but one subject and matters properly connected therewith,

> which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

The purpose of this constitutional provision is to prevent "the combining of incongruous matters and objects totally distinct and having no connection nor relation with each other; to guard against 'logrolling' legislation; and to prevent the perpetration of fraud upon the members of the Legislature or the citizens of the state in the enactment of laws." *Ex parte Crane*, 27 Idaho 671, 689, 151 P. 1006, 1011 (1915). To violate this provision, "an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other." *Boise City v. Baxter*, 41 Idaho 368, 377, 238 P. 1029, 1033 (1925), *discussing Johnson v. Harrison*, 50 N.W. 923 (Minn. 1891). The Idaho Supreme Court has stated, however, that "a single act may embrace many subjects and not be duplicitous if they pertain to matters that are properly connected with the subject of the act." *Baxter*, 41 Idaho at 376, 238 P. at 1032, *discussing Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295 (1902). In describing the "purpose, meaning, and rules" for the application of article III, section 16 of the Idaho Constitution, the Idaho Supreme Court noted:

> It is said that if the provisions of an act all relate directly or indirectly to the same subject, having a natural connection therewith, and are not foreign to the subject expressed in the title, they may be united in one act; that however numerous the provisions of an act may be, if they can be by fair intendment considered as falling within the subject-matter legislated upon in such act, or necessary as ends and means to the attainment of such subject, the act will not be in conflict with this constitutional provision; that if an act has but one general subject, object, or purpose, and all of its provisions are germane to the general subject and have a necessary connection therewith, it is not in violation of this constitutional provision; that said provision was not intended to prevent the incorporation into a single act of the entire statutory law upon one general subject.

Id.

In the case at bar, Plaintiffs assert that the lengthy title of SB 1108 contains twenty-six sections which, on their face, address "no less than seven discrete subjects."[1] Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 2. Plaintiffs characterize those subjects as follows: the substantive and procedural rules governing the formation and terms of individual public

[1] Plaintiffs do not contend that the title of SB 1108 violates the requirement in article III, section 16 of the Idaho Constitution that the act's subject be expressed in its title. See Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 10, n.5.

school teachers' employment contracts (Sections 1-7), local school district reductions in force (Section 9), the obligations of local school districts and professional liability insurance providers to supply information to teachers regarding the availability of liability insurance (Section 11), and collective bargaining between local school districts and local teachers' organizations over the terms and conditions of teachers' employment (Sections 15, 18-21); the substantive rules governing the power of principals to approve or disapprove the assignment of teachers to their schools (Section 10) and the level of state funding of local school districts that experience a decrease in average daily attendance and of certain "special" schools (Section 12); the repeal of the State's early retirement incentive benefit program for teachers (Section 13); and the legality of certain existing collective bargaining agreements entered into by local school districts and local teachers' organizations (Section 16, 22), as well as the legality of certain terms in future collective bargaining agreements (Section 22). See Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 13-14. Plaintiffs assert that there is no discernible relationship between these provisions.

Defendants assert that SB 1108 addresses a single subject, the employment relationship between local school boards and their certificated personnel. See Memorandum in Support of Defendants' Motion for Summary Judgment at 18. Defendants acknowledge that SB 1108 significantly modifies prior law with respect to individual teacher contracts, reductions in force, the availability of early retirement incentives, and collective bargaining between school boards and professional employee collective bargaining representatives. Memorandum in Support of Defendants' Motion for Summary Judgment at 3. Defendants assert that these changes are aimed at increasing school board discretion over the terms and conditions of the employment of certificated personnel, and that SB 1108 accomplishes this aim through "the abolition of teacher tenure, the implementation of reductions in force, the restriction on the scope of permissible collective bargaining to 'compensation,' and the elimination of a financial incentive for early retirement." Memorandum in Support of Defendants' Motion for Summary Judgment at 18.

The Court concludes that the provisions of SB 1108 "all relate directly or indirectly to the same subject." *See Baxter*, 41 Idaho at 376, 238 P. at 1032, *discussing Pioneer Irrigation Dist.*, 8 Idaho 310, 68 P. 295. The Court further finds that Defendants have appropriately characterized that subject as "the employment relationship between local school boards and their certificated personnel." The provisions of SB 1108, though numerous, "can be by fair intendment considered as falling within" such subject matter. *Id.* Specifically, such provisions are aimed at increasing school

board discretion over the terms and conditions of the employment of certificated personnel, and may be considered "necessary as ends and means to the attainment of" that purpose. *Id.* Indeed, the Statement of Purpose accompanying SB 1108 is consistent with Defendants' characterization of the subject of the legislative enactment, as well as its aims: "This part of Idaho's Students Come First legislation relates to labor relations and employee entitlements. This legislation returns decision-making powers to locally elected school boards and creates a more professional and accountable work force." See Supplement to Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, Tab 2. As noted above, a single legislative enactment "may embrace many subjects and not be duplicitous" if such subjects "pertain to matters that are properly connected with the subject" of such legislation. *Baxter*, 41 Idaho at 375-376, 238 P. at 1032, *discussing Pioneer Irrigation Dist.*, 8 Idaho 310, 68 P. 295. The Court concludes that SB 1108 does not violate the single subject rule set forth in article III, section 16 of the Idaho Constitution. Accordingly, Defendants are entitled to summary judgment as to this claim.

Contract clause

Article I, section 16 of the Idaho Constitution provides: "No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed." The constitutional impairment of contracts clause "protects only those contractual obligations already in existence at the time the disputed law is enacted." *State ex rel. Department of Labor and Industrial Services v. Hill*, 118 Idaho 278, 283, 796 P.2d 155, 160 (Ct. App. 1990), *citing Lindstrom v. District Board of Health Panhandle District I*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985). A legislative enactment "is said to 'impair' the obligation of a contract which attempts to take from a party a right to which he is entitled by its terms, or which deprives him of the means of enforcing such a right." *In re Fidelity State Bank of Orofino*, 35 Idaho 797, 810, 209 P. 449, 452 (1922), *quoting* 12 C.J. 1056, § 699.

Plaintiffs assert that two provisions of SB 1108, Section 13 and Section 22, violate the contract clause set forth in article I, section 16 of the Idaho Constitution.

A. Section 13

Section 13 of SB 1108 repeals I.C. § 33-1004G, which had provided an early retirement incentive for certificated employees of public school districts who met certain criteria. Specifically, a one-time incentive would be paid to those employees who had completed ten years of continuous

full-time certified employment, were not eligible for an unreduced pension under the public employee retirement system, were 55 to 62 years of age, submitted an application for the early retirement incentive by April 1 of the year of application, and had an employment contract with a public school district for the entire school year during the year of application. See I.C. § 33-1004G(1)(a)-(e). Plaintiffs assert that by repealing I.C. § 33-1004G, Section 13 of SB 1108 retroactively eliminates an existing retirement benefit of public school teachers who were employed by a local school district while the incentive program was still in effect.[2] Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 6. Defendants assert that I.C. § 33-1004G did not create a contractual right to which article I, section 16 of the Idaho Constitution would apply. See Memorandum in Support of Defendants' Motion for Summary Judgment at 41-42.

By way of analogy, courts applying the federal counterpart to Idaho's contract clause have recognized that the Contract Clause limits the power of states "to modify their own contracts as well as to regulate those between private parties." *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1977) (citations omitted).[3] However, the Contract Clause "does not prohibit the States from repealing or amending statutes generally, or from enacting legislation with retroactive effects." *Id.* Accordingly, when it is asserted that the repeal of a statute violates the Contracts Clause, the preliminary determination is whether "the repeal has the effect of impairing a contractual obligation." *Id.* As a general rule, "absent some clear indication that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'" *National R.R. Passenger Corp. v. Atchison, Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 465-66 (1985), *quoting Dodge v. Board of Educ. of City of Chicago*, 302 U.S. 74, 79 (1937); *see also United States Trust Co. of New York*, 431 U.S. at 18, n.14 (stating that in general, "a statute is itself treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the State").

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[2] Plaintiffs do not challenge the legality of Section 13 as to teachers who were hired by public school districts *subsequent to* the repeal of I.C. § 33-1004G. See Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 6.

[3] Article I, Section 10, Clause 1 of the United States Constitution provides, in pertinent part, "No State shall ... pass any ... Law impairing the Obligation of Contracts." *See also City of Hayden v. Washington Water Power Co.*, 108 Idaho 467, 468, 700 P.2d 89, 90 (Ct. App. 1985) (stating that article I, section 16 of the Idaho Constitution "provides similar protection" to the Contract Clause under Article I, Section 10, Clause 1 of the United States Constitution).

Plaintiffs assert that under the "compensatory theory" of retirement benefits embraced by the Idaho Supreme Court in *Nash v. Boise City Fire Dep't*, 104 Idaho 803, 663 P.2d 1105 (1983), and *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968), I.C. § 33-1004G established legally protected contract rights. Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 10. According to Plaintiffs, the early retirement incentive provided by I.C. § 33-1004G should be considered a form of deferred compensation in which public school teachers who were employed by a local school district for a "legally significant period of time" while the statute was in force have acquired a vested contract right. Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 23.

The Court agrees with Defendants' statement that the mere availability of the one-time incentive provided for in I.C. § 33-1004G does not evince a legislative intent to create a contractual right enforceable against the State. See Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment at 19; *see also United States Trust Co. of New York*, 431 U.S. at 18, n.14. Plaintiffs point to the following language of the statute as evidence of an express intent to create a contract right to the incentive payment: "Incentives shall be considered additional compensation flowing from the employment relationship and subject to federal and state tax law." I.C. § 33-1004G(4). However, despite the phrase "compensation flowing from the employment relationship," it appears that the primary purpose of this provision is to alert those who qualify that their election to receive an incentive payment will have tax consequences. The provision goes on to state, "Incentives shall not be considered salary for purposes of the public employee retirement system."[4] I.C. §33-1004G(4).

The Court also concludes that the early retirement incentive provided by I.C. § 33-1004G is distinguishable from the pension plans in which the Idaho Supreme Court concluded the employees had a vested contract right in *Nash* and *Hanson*. In *Hanson*, the Idaho Supreme Court considered the constitutionality of the Policeman's Retirement Fund, which provided municipal policemen with retirement compensation and disability, death, and funeral benefits. The plan was funded by

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[4] The incentive is also specifically excluded from the definition of "salary" under the public employee retirement system:

> "Salary" does not include:
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> . . . .
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> (b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

I.C. § 59-1302(31)(C)(b).

deductions of up to 4% of the salaries of the individual policemen, as well as contributions by the city by which they were employed. The *Hanson* court stated that

> the rights of the employees in pension plans such as Idaho's Retirement Fund Act are vested, subject only to reasonable modification for the purpose of keeping the pension system flexible and maintaining its integrity. . . . Since the employees' rights are vested, the pension plan cannot be deemed to provide gratuities. Instead it must be considered compensatory in nature.

92 Idaho at 514, 446 P.2d at 636 (citations omitted). The court then quoted the Pennsylvania Supreme Court for the proposition that the modern pension is not a mere gift or a "manifestation of sovereign generosity;" rather, it is "the product of mutual promises between the pensioning authority and the pensioner; it is the result of contributions into a fund which exists for the single purpose of pensions." *Id.* at 515, 446 P.2d at 637, *quoting Hickey v. Pension Bd. of City of Pittsburgh*, 106 A.2d 233 (Pa. 1954).

Similarly, in *Nash*, the Idaho Supreme Court addressed the constitutionality of a 3% cap on the cost of living adjustment that applied to the Fireman's Retirement Benefit Fund. The court framed the issue presented as "whether the level of a public employee's rights in a pension plan which has vested may be unilaterally altered by subsequent legislative act." 104 Idaho at 804, 663 P.2d at 1106. The court concluded that employee's rights were "unquestionably vested," as he had worked as a firefighter for Boise City for twenty-five years. *Id.* at 808, 663 P.2d at 1110. The court ultimately concluded that the 3% cap could not be applied to the employee's pension benefit.

The underlying concept in the *Nash* and *Hanson* holdings is that a pension plan is an important part of an employee's compensation. Discussing the *Hanson* decision, the Idaho Supreme Court in *Engen v. James*, 92 Idaho 690, 448 P.2d 977 (1969), stated that if the respondent had acquired pension rights under the Policeman's Retirement Fund, "those existing rights could not be taken from him by a later act of the legislature. This follows from the compensatory nature of pension plans." *Id.* at 693, 448 P.2d at 980. By contrast, the early retirement incentive provided by I.C. § 33-1004G does not resemble the pension plans in which the employees in the above cases were deemed to have acquired vested rights. Although I.C. § 33-1004G(4) provides that the incentive payment is to be considered compensation for tax purposes, in terms of the relationship of the payment to the employee's services, the incentive payment itself cannot be described as compensatory in nature. The incentive is a one-time payment, the funding for which comes from the state department of education. See I.C. § 33-1004G(3); *compare, e.g., Jackson v. Minidoka*

Irrigation Dist., 98 Idaho 330, 335, 563 P.2d 54, 59 (1977) (stating that "employer contributory retirement benefits constitute deferred compensation to the employee"). No employee contributions are required, and no salary is deferred or withheld for the purpose of accumulating a fund for the payment of the incentive. Notably, the purpose of I.C. § 33-1004G appears to have been primarily fiscal in nature, as the retirement incentive provided a "tool for districts" to replace an experienced teacher with a beginning teacher whose salary would save the state approximately "$19,573 in the first year alone."[5] See 1996 Statement of Purpose and Fiscal Impact Statement, HB 526, RS 05422. For these reasons, the Court concludes that the retirement incentive set forth in I.C. § 33-1004G is not a form of deferred compensation in which teachers employed by a school district for a significant period of time have acquired a vested contract right. As the repeal of I.C. § 33-1004G does not impair a contractual obligation, Section 13 of SB 1108 does not violate article I, section 16 of the Idaho Constitution. Accordingly, Defendants are entitled to summary judgment as to this claim.

B. Section 22

Plaintiffs assert that Section 22 of SB 1108 violates the contract clause set forth in article I, section 16 of the Idaho Constitution in two ways. First, Section 22 prematurely terminates all existing collective bargaining agreements between local school districts and local teachers' organizations on June 30, 2011, without regard for the stated term of the agreement or the inclusion of an "evergreen" or "continuation" clause which extends the agreement beyond its stated term during negotiation of a successor agreement. Memorandum of Law in Support of Plaintiffs' Motion

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[5] When I.C. § 33-1004G was enacted in 1996, the purpose and fiscal impact were identified as follows:

STATEMENT OF PURPOSE
RS 05422

This bill provides for an early teacher retirement incentive or buy out in Idaho school districts. HB1560 removed the financial incentive for districts to offer a buy out because of new salary allocation schedules determined at the state level. The majority of Idaho's school districts had some form of early retirement buy out prior to SB1560. The incentive will provide a tool for districts to replace teachers who may no longer be performing at their peak level with beginners who may be willing to dedicate energy, time and effort to successful teaching, thereby revitalizing the teaching team at the school.

FISCAL IMPACT

The savings in salaries now generated by replacing an experienced teacher who may cost the State up to $38,901 per year with a beginning teacher who costs $19,328 could free up $19,573 in the first year alone. This incentive program would not affect PERSI nor cost the State additional monies. Funds would shift from the salary pool to discretionary categories that buy textbooks, pay for utilities, etc.

1996 Statement of Purpose and Fiscal Impact Statement, HB 526, RS 05422.

for Summary Judgment at 1. Second, Section 22 nullifies, retroactive to January 31, 2011, any other provisions in existing collective bargaining agreements that conflict with the terms of SB 1108. Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment at 1. Defendants assert that to the extent Plaintiffs' challenge to Section 22 is characterized as a "facial" challenge, significant joinder issues are raised under I.R.C.P. 19(a) and the Idaho Declaratory Judgments Act. Memorandum in Support of Defendants' Motion for Summary Judgment at 19. Defendants further assert that Plaintiffs' challenge should be maintained as an "as-applied" challenge, and that such challenge requires that the Caldwell School District, the Fremont School District, and the Shoshone School District be joined as defendants in the matter. Memorandum in Support of Defendants' Motion for Summary Judgment at 20.

Plaintiffs have clarified that their challenge to Section 22 of SB 1108 is indeed a facial challenge.[6] Specifically, Plaintiffs maintain that Section 22 "facially violates" the contract clause of the Idaho Constitution "by limiting the duration of existing contracts to one year, nullifying "evergreen" or "continuation" clauses in existing contracts, and changing the substantive terms of existing contracts." Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 15. The Court notes that the party who brings a suit is master of the complaint and may decide what claims to pursue. *See, e.g., The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913); *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995). *See also Citizens United v. Federal Election Comm'n*, --- U.S. ---, 130 S. Ct. 876, 893 (2010) (stating that the distinction between facial and as-applied challenges goes to the breadth of the remedy employed by the court, not what must be pleaded in a complaint). The Court also concludes, for the reasons set forth below, that joinder of the Caldwell School District, the Fremont School District, and the Shoshone School District is not necessary in this matter.

Defendants assert that the three school districts must be joined pursuant to I.C. § 10-1211, which provides, in pertinent part: "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." However, I.R.C.P. 57(a) provides,

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[6] The Court notes that Defendants have also argued that the contract impairment challenges brought by the CEA and the SEA are moot because those organizations have entered into new contracts for the 2011-12 school year, but that the FEA's claim can continue on an as-applied basis. See Memorandum in Support of Defendants' Motion for Summary Judgment at 28; Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment at 10. However, as Plaintiffs have brought a facial challenge to Section 22 of SB 1108, the Court will not address the specific terms of the contracts entered into by the CEA, SEA, and FEA.

"The procedure for obtaining a declaratory judgment pursuant to the statutes of this state, shall be in accordance with these rules." Accordingly, the Court is guided by I.R.C.P. 19(a)(1) in determining whether the school districts must be joined in the declaratory judgment action before the Court. That rule provides:

> **Persons to be joined if feasible.**
> A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

I.R.C.P. 19(a)(1). The moving party has the burden "to demonstrate the indispensability of a party." *Ada County Highway Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 372, 179 P.3d 323, 335 (2008), *citing Volco, Inc. v. Lickley*, 126 Idaho 709, 713 n.6, 889 P.2d 1099, 1103 n.6 (1995). Further, joinder of "all parties with an interest in the subject matter of the suit is not required; rather, only those who have an interest in the object of the suit should be joined." *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 714, 152 P.3d 581, 585 (2007) (citations omitted).

Initially, the Court notes that subsection two of I.R.C.P. 19(a)(1) is not applicable in this matter, because no person "claims an interest" relating to the subject of an action. The school districts have not asserted that they are interested parties, and Defendants have not demonstrated that they may assert such an interest on the school districts' behalf. As to subsection one of I.R.C.P. 19(a)(1), the Court finds that complete relief may "be accorded among those already parties." Through their facial challenge to Section 22, Plaintiffs are seeking a determination that Section 22 of SB 1108 is unconstitutional. The Court can make a legal determination as to the constitutionality of such provision in the absence of the school districts. *Cf. American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Resources*, 143 Idaho 862, 870, 154 P.3d 433, 441 (2007), *quoting State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998) ("A facial challenge to a statute or rule is 'purely a question of law.'"). Accordingly, joinder of the Caldwell School District, the Fremont School District, and the Shoshone School District is not necessary pursuant to I.R.C.P. 19(a)(1).

In order for a facial constitutional challenge to succeed, the party challenging the legislation "must demonstrate that the law is unconstitutional in *all* of its applications. . . . In other words, 'the

challenger must establish that no set of circumstances exists under which the [law] would be valid.'" *American Falls Reservoir Dist. No. 2*, 143 Idaho at 870, 154 P.3d at 441, *quoting State v. Korsen*, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003) (emphasis in original). As noted above, statutes are presumed valid; the invalidity of a law must be "clearly shown" by the party who asserts that the law is unconstitutional. *Leonardson*, 92 Idaho at 806, 451 P.2d at 552 (citations omitted). Further, the "judicial power to declare legislative action unconstitutional should be exercised only in clear cases." *American Falls Reservoir Dist. No. 2*, 143 Idaho at 869, 154 P.3d at 440 (citations omitted).

With regard to the Contract Clause set forth in the United States Constitution, the United States Supreme Court has stated, "Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 410 (1983), *quoting Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434 (1934).[7] The "threshold inquiry" in a Contract Clause challenge is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Energy Reserves Group*, 459 U.S. at 411, *quoting Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). This inquiry has "three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992). An impairment of a public contract is considered "substantial if it deprives a private party of an important right, thwarts the performance of an essential term, defeats the expectations of the parties, or alters a financial term." *California Hospital Ass'n v. Maxwell-Jolly*, 776 F.Supp. 2d 1129, 1142 (E.D. Cal. 2011), *quoting Southern California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 890 (9th Cir. 2003).

The Court concludes that Section 22 of SB 1108 operates as a substantial impairment of a contractual relationship. Section 22, as amended by HB 335, amends I.C. § 33-1275 to provide as follows:

> **Terms of agreements.** – (1) All negotiated agreements or master contracts, by any name or title, entered into pursuant to the provisions of this act, shall have a term of July 1 through June 30 of the ensuing fiscal year. The board of trustees shall not have the authority to enter into any agreement negotiated under the provisions of this act that has any clause or provision which allows for such agreement to be in any force or

[7]As was previously noted, the Idaho Court of Appeals has recognized the similar protection afforded by the Contract Clause of the United States Constitution, Article I, Section 10, Clause 1, and article I, section 16, of the Idaho Constitution. See, again, *City of Hayden v. Washington Water Power Co.*, 108 Idaho at 468, 700 P.2d at 90.

> effect for multiple years or indefinitely, or otherwise does not expire on its own terms on or before June 30 of the ensuing fiscal year.
>
> (2) Any agreement or contract previously entered pursuant to the provisions of sections 33-1271 through 33-1276, Idaho Code, shall be deemed to expire as of June 30, 2011, regardless of any evergreen, continuation or other clause included in such contract which provides for continuation beyond June 30, 2011. In addition, any term of any existing agreement which conflicts with the current provisions of title 33, Idaho Code, is hereby declared void and unenforceable from the date of July 1, 2011. Provided however, that should any master agreement or negotiated contract contain a provision which conflicts with the provisions of title 33, Idaho Code, such provision in the master agreement or negotiated contract is hereby declared to be null and void and of no force and effect as of January 31, 2011.

Accordingly, Section 22 has the effect of impairing existing collective bargaining agreements between local school districts and labor organizations by deeming all such agreements to expire as of June 30, 2011, regardless of the stated duration of the agreement or the inclusion of any "evergreen" clause, and by nullifying, as of January 31, 2011, any provisions in such agreements which conflict with the Idaho Education Code as amended by SB 1108. Such impairments certainly defeat the expectations of the parties, and the Court concludes that contractual impairments of this nature are substantial.

A finding that there has been an impairment "is merely a preliminary step in resolving the more difficult question" of whether that impairment is constitutionally permitted. *United States Trust Co. of New York*, 431 U.S. at 21. In considering this question, the United States Supreme Court has stated, "we must attempt to reconcile the strictures of the Contract Clause with the 'essential attributes of sovereign power' necessarily reserved by the States to safeguard the welfare of their citizens." *Id., quoting Blaisdell*, 290 U.S. at 434-40. If the legislative enactment or regulation in question

> constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, *United States Trust Co.*, 431 U.S., at 22, 97 S.Ct., at 1517, such as the remedying of a broad and general social or economic problem. *Allied Structural Steel Co.*, 438 U.S., at 247, 249, 98 S.Ct., at 2723-2725. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. *United States Trust Co.*, 431 U.S., at 22, n.19, 97 S.Ct., at 1518, n.19; *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S., at 39-40, 60 S.Ct., at 795-796.
>
> . . . The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.

Energy Reserves Group, 459 U.S. at 411-12. *Cf. City of Hayden v. Washington Water Power Co.*, 108 Idaho at 469, 700 P.2d at 91 (citations omitted) ("A city has the inherent right to enact valid police power regulations, even if contracts are thereby affected.").

The Court concludes that Section 22 of SB 1108 serves a legitimate public purpose. Article IX, section 1 of the Idaho Constitution provides: "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools." In discussing this provision, the Idaho Supreme Court has stated:

> From our statutes and Constitution, there can be no doubt as to the purpose of the people regarding the common schools. The great object sought was the creation of a public school system that would be efficient and enduring; and while that duty was imposed on the Legislature by the Constitution a large discretion was given to it, in which to "establish and maintain a general, uniform, and thorough system of public, free common schools" . . .

Fenton v. Board of Commissioners of Ada County, 20 Idaho 392, 402, 119 P. 41, 45 (1911), *distinguished on unrelated grounds by School Dist. No. 8, Twin Falls County v. Twin Falls County Mut. Fire Ins. Co.*, 30 Idaho 400, 164 P. 1174 (1917). The legislature has "plenary power . . . in the field of public education." *Thompson v. Engelking*, 96 Idaho 793, 802, 537 P.2d 635, 644 (1975), *citing Electors of Big Butte Area v. State Board of Education*, 78 Idaho 602, 308 P.2d 225 (1957). As the duty of the legislature regarding public education in Idaho is constitutionally mandated, legislative enactments which enable the legislature to carry out this duty certainly touch upon a significant public purpose.

The purpose of SB 1108 relates to matters of efficiency and accountability within Idaho's public school system. As noted above, the Statement of Purpose accompanying SB 1108 provides, in pertinent part, "This legislation returns decision-making powers to locally elected school boards and creates a more professional and accountable work force." See Supplement to Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, Tab 2. Such purposes are consistent with the legislature's duty to maintain a uniform and thorough system of free, public education. Further, the purposes are legitimate public purposes, as they promote the general welfare of the people of the state of Idaho, rather than simply providing a benefit to a select few. *See Energy Reserves Group*, 459 U.S. at 411-12. *Cf. City of Hayden v. Washington Water Power Co.*, 108 Idaho at 469, 700 P.2d at 91, *citing Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083 (1914) (the police

power is limited to "governmental acts promoting the health, comfort, safety and general welfare of society").

With regard to the final step in the analysis of a contract clause challenge, the United States Supreme Court has stated, "Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Energy Reserves Group*, 459 U.S. at 412-13, *quoting United States Trust Co. of New York*, 431 U.S. at 22-23. In "reviewing economic and social regulation" where the state itself is not a contracting party, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves Group*, 459 U.S. at 412, *quoting United States Trust Co. of New York*, 431 U.S. at 22. Where the state is a party to the contract, however, "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." *Energy Reserves Group*, 459 U.S. at 413, *quoting United States Trust Co. of New York*, 431 U.S. at 26. The Court concludes that the less deferential standard is applicable in the case at bar, as the contracts at issue involve local teachers' organizations, which are private entities, and local school boards, which are political subdivisions of the state.

Applying this less deferential standard, the Court concludes that Section 22 is both reasonable and necessary to the legitimate purposes furthered by SB 1108. As noted above, one of those purposes is returning decision-making power to local school boards. Through SB 1108, I.C. § 33-1271 was amended to provide that negotiations between local school districts and teachers' organizations will be limited to "matters related to compensation of professional employees." This provision is necessary to the stated purpose of SB 1108, because by limiting the scope of collective bargaining agreements to matters of compensation, the legislature has enabled local school boards to exercise greater decision-making power with regard to all other matters not related to compensation. The provision is reasonable in that it leaves in place the power and the duty of local school districts to negotiate with teachers' organizations as set forth in I.C. § 33-1271, merely restricting the scope of such negotiations. Section 22 also nullifies any terms in existing collective bargaining agreements that go beyond the scope of matters related to compensation, and further provides that all existing collective bargaining agreements shall be deemed to expire as of June 30, 2011. These provisions are reasonable and necessary because they ensure that, starting with the 2011-12 school year, all collective bargaining agreements between local school districts and teachers' organizations will begin

on equal footing in terms of scope, and that such agreements will be the product of negotiations by the current elected board of trustees. Again, these provisions further the legitimate purpose of returning decision-making power to local school boards. As stated above, such provisions operate as a substantial impairment of existing collective bargaining agreements. However, the Court finds that impairment to be reasonable in relation to the legitimate purposes of SB 1108, as well as an appropriate means of carrying out such purpose. *See Energy Reserves Group*, 459 U.S. at 412-13, *quoting United States Trust Co. of New York*, 431 U.S. at 22-23. For these reasons, the Court concludes that Section 22 of SB 1108 does not violate article I, section 16 of the Idaho Constitution. Accordingly, Defendants are entitled to summary judgment as to this claim.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Summary Judgment is hereby granted. Plaintiffs' Motion for Summary Judgment is denied.

Defendants are hereby directed to prepare a form of judgment consistent with this opinion.

IT IS SO ORDERED.

Dated this 28th day of September, 2011.

TIMOTHY HANSEN
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 16th day of September, 2011, I mailed (served) a true and correct copy of the within instrument to:

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